

# Regulatory Report

Regulatory News for Virginia Consumer Finance Company,  
Payday Lender, and Motor Vehicle Title Lender Licensees

State Corporation Commission-Bureau of Financial Institutions

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The Regulatory Report is published by the Bureau of Financial Institutions and is part of its efforts to improve communication with the companies we regulate. It is distributed to Virginia payday lender, motor vehicle title lender and consumer finance company licensees and other interested parties. It is the licensee's responsibility as a Virginia payday lender, motor vehicle title lender, and consumer finance company licensee to read this newsletter and to be familiar with the positions and interpretations stated herein. We also encourage you to forward the information contained in this newsletter to your employees who are involved in making consumer finance, payday and title loans and meeting compliance standards.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau of Financial Institutions at P.O. Box 640, Richmond, VA 23218-0640 or via email at:  
[bfquestions@scv.virginia.gov](mailto:bfquestions@scv.virginia.gov).

## Warning Notice and Pamphlet Related to Motor Vehicle Title Lending

During examinations of motor vehicle title lender licensees, we have discovered that licensees are receiving, through their websites, information from prospective borrowers including motor vehicle information (e.g. make, model, VIN, etc.) without providing the prospective borrower with a written notice and a borrower rights and responsibilities pamphlet in violation of 10 VAC 5-210-30 A.

To comply with 10 VAC 5-210-30 A, licensees must provide a prospective borrower with (i) a written notice that complies with subsection B of 10 VAC 5-210-30, and (ii) a borrower rights and responsibilities pamphlet that complies with subsections C and D of 10 VAC 5-210-30 prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification. When a licensee accepts information from prospective borrowers through a website without first providing the required written notice and borrower rights and responsibilities pamphlet, the licensee violates 10 VAC 5-210-30. The only way for licensees to comply with 10 VAC 5-210-30 A is to also comply with subsections B, C, and D. Subsection B requires the warning notice be signed and dated by the prospective borrower prior to submitting information to the licensee relating to loan qualification.

Please be aware that motor vehicle information provided to the licensee by the prospective borrower is "information relating to loan qualification" which triggers the requirement that the warning notice and pamphlet be provided, and the warning notice being signed and dated by the prospective borrower. If a licensee chooses to provide the warning notice and pamphlet electronically, then the warning notice must also be signed and dated electronically by the prospective borrower (in accordance with the ESIGN ACT and Virginia's Uniform Electronic Transactions Act) before the prospective borrower can submit information relating to loan qualification (including motor vehicle information) through a website.

## "Administrative Close" in VA Payday Lending Database

Payday lender licensees are reminded that the "Administrative Close" option, as designated in the Veritec Administrator Training Manual, should only be utilized when a borrower cancels (rescinds) a payday loan or a payday loan is made in error. Do not use the Administrative Close option when a loan is paid or otherwise satisfied in full, even if the payment that satisfies the loan is \$0.



## Summary of the Amendments to the Payday Lending Regulations

The following summary highlights, but does not fully explain, some of the new provisions that are set forth in 10 VAC 5-200-10 et seq. Payday lending licensees are responsible for reading and complying with all of the Commission's regulations relating to payday lending. The effective date for the amended regulations was May 1, 2014.

### 10 VAC 5-200-10:

"Prepaid card" and "debit card" were added to the definition of "good funds instrument."

"Prepaid card" and "short-maturity loan" were defined.

### 10 VAC 5-200-20:

- A. The minimum liquid assets requirement (\$25,000 per place of business) for payday lenders must be separate and apart from any minimum liquid assets that the licensee is required to maintain in connection with any other business conducted in the same office.
- H. Licensees shall not obtain any agreement from a borrower that gives the licensee or a third party the authority to create or otherwise prepare a check that is drawn upon the borrower's account at a depository institution...
- N. ...A licensee or former licensee shall maintain certain contact information with the bureau until the licensee or former licensee has no outstanding payday loans.
- P. When disposing of records containing a consumer's personal financial information, the records must be shredded, incinerated, or otherwise disposed of in a secure manner...
- Q. Specifies events that require licensees to file a written report with the Commissioner of Financial Institutions.
- T. Licensees shall not obtain or receive a personal identification number (PIN) for a credit card, prepaid card, debit card, or any other type of card in connection with a payday loan transaction.

### 10 VAC 5-200-80:

Text of the payday lending pamphlet was updated to reflect certain proposed amendments to Chapter 200. (Licensees should have started using new pamphlets that contain the updated language as of May 1, 2014.)

### 10 VAC 5-200-85:

Prescribes disclosure requirements for licensees' advertisements.

### 10 VAC 5-200-110:

- C. Licensees must receive a completed written loan application prior to querying the Virginia Payday Lending Database to determine whether any person is eligible for a payday loan.
- O. A licensee or former licensee shall be deemed by the Commissioner of Financial Institutions to have ceased business if it (i) fails to respond to the bureau after two written requests mailed to the address on file with the bureau or (ii) fails to maintain its contact information in accordance with subsection N of 10 VAC 5-200-20.

### 10 VAC 5-200-113:

Clarifies that certain payday lending data is not confidential and may be furnished by the database provider to the public.



## License Update

The following is a list of companies that have had their licenses revoked, had an application denied, entered into a settlement agreement or been ordered to cease and desist since May 1, 2013. These lists are accurate as of May 1, 2014. Call the Bureau if you have a question concerning a recent denial, revocation, cease and desist or settlement entered into by the Commission. A list of licensed consumer finance companies, motor vehicle title lenders and payday lenders are available on our Web site at: <http://www.scc.virginia.gov/bfi/index.aspx> (under Regulated Institutions click on “Consumer Finance Cos.,” “Motor Vehicle Title Lenders” or “Payday Lenders”).

### Licenses Revoked, Denied or Suspended

VTL - 30 Alankar Investments USA Inc. - revocation order entered 10/8/13. Failed to maintain a surety bond in violation of § 6.2-2204 of the Code of Virginia.

### Settlement Orders

Gulfport Financial, L.L.C. d/b/a Virginia Cash Advance f/k/a GF Acquisition, LLC, and Pinebrook Holdings, LLC - order entered on 9/23/13. Paid \$5,000 for allegedly failing to obtain Commission approval prior to acquiring, directly or indirectly, more than 25% of the ownership of Gulfport Financial, L.L.C. d/b/a Virginia Cash Advance (PL-58) in violation of § 6.2-1808 of the Code of Virginia.

### Cease and Desist

VIP PDL Services, LLC a/k/a The VIP Loan Shop.com - order entered on 4/15/2014. Ordered to immediately cease and desist from engaging in the business of making payday loans to Virginia residents in violation of § 6.2-1801 of the Code of Virginia.

Liberty Pawnshop & Gold, LLC - order entered on 10/8/13. Ordered to immediately cease and desist from engaging in the business of making motor vehicle title loans without a license in violation of § 6.2-2201 of the Code of Virginia.

Northway Financial Corporation Ltd and Northway Broker Ltd d/b/a Zip 19, Cash Transfer Centers, and Sonic Payday - order entered on 7/25/13. Ordered to immediately cease and desist from engaging in the business of making payday loans to Virginia residents in violation of § 6.2-1801 of the Code of Virginia.

## Annual Assessments for Payday and Motor Vehicle Title Lenders

Section 6.2-1814 of the Code of Virginia requires licensed payday lenders and § 6.2-2213 requires licensed motor vehicle title lenders to pay an annual fee to defray the costs of their examination, supervision and regulation. Annual assessments will be mailed out on or before September 15, 2014 and fees must be paid by October 15, 2014. Failure to pay the assessment by the due date can lead to regulatory action.

Virginia Regulation 10 VAC 5-200-90 sets the assessment schedule for payday lenders. The annual fee is based on information provided in the annual report and will include \$500 for each office authorized and opened as of December 31 plus \$0.47 per payday loan made. In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay \$250 per office, authorized and opened as of September 15 of that year.

Virginia Regulation 10 VAC 5-210-95 sets the assessment schedule for motor vehicle title lenders. The annual fee is based on information provided in the annual report and will include \$500 for each office authorized and opened as of December 31 plus \$2.85 per motor vehicle title loan made. In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay \$250 per office, authorized and opened as of September 15 of that year.



## **Reduction of Interest Rates on Loans Made Under Chapter 15 of Title 6.2 of the Code of Virginia (Consumer Finance Loan)**

- When a judgment is obtained on a consumer finance loan, the interest rate shall be the contract interest rate awarded by the court or 6% per year, whichever is greater (Reference § 6.2-302 of the Code of Virginia). Evidence of the rate of interest awarded by the court should be retained in the loan file.
- When a loan is unpaid six months after the maturity date (taking into account any deferments), the interest rate must be reduced to 6% per year (Reference § 6.2-1522 of the Code of Virginia).
- When a borrower (or co-borrower) files for Chapter 7 bankruptcy, the interest rate must be reduced to 6% per year 90 days after the date of the bankruptcy adjudication, unless the borrower has reaffirmed his obligation on the note (Reference § 6.2-1522 of the Code of Virginia). When there is a Chapter 13 bankruptcy, review the bankruptcy plan to determine the borrower's interest rate. A copy of the payment plan ordered by the bankruptcy court should be retained in the loan file.
- Upon 90 days after the death of a borrower (or co-borrower), the interest rate on the remaining balance must be reduced to 6% per year (Reference § 6.2-1522 of the Code of Virginia).



Beginning with this issue, articles addressing consumer finance companies, such as law or regulation changes; compliance tips and trends; will now be included in this newsletter, the Regulatory Report, instead of the Compliance Connection, which is mainly geared toward mortgage related topics.

## **Motor Vehicle Title Lending Reminders:**

- A motor vehicle title lender licensee that repossesses and sells a borrower's motor vehicle in order to satisfy a motor vehicle title loan is permitted to charge the borrower for the costs incurred by the licensee in repossessing and selling the motor vehicle provided that (i) the licensee mails, by first class mail, the notice required by § 6.2-2217 A of the Code of Virginia to the borrower at least 10 days prior to repossessing the motor vehicle, and (ii) the borrower fails to repay the amount owed to the licensee prior to the date of repossession. Section 6.2-2217 A does not require a licensee to send the referenced notice to a borrower prior to repossession if the licensee is willing to absorb the costs of repossession and sale and forgo recovering such costs from the borrower.
- In addition to any other books, accounts, and records as the bureau may reasonably require, a licensee shall maintain copies of a record of the fair market value of the motor vehicle securing the loan along with supporting documentation from a recognized pricing guide. Some licensees are generating the supporting documentation from their interface or own computer software and not from the recognized pricing guide as required by Virginia Regulation 10 VAC 5-210-90 B 3.



## Deputy Commissioner Kyrus Retires

After 39 years with the Bureau of Financial Institutions (BFI), Nick Kyrus hung up his regulator's hat on April 1. Nick joined the State Corporation Commission's (SCC) Bureau of Banking (now BFI) in May 1975. Nick and his staff ensure that regulated financial institutions – including banks, credit unions, consumer finance companies, and more – meet the statutory requirements for starting business in Virginia and expanding through mergers, acquisitions, and adding branches. We wish him many happy and healthy years in retirement!



Deputy Commissioner Gerald E. Fallen has assumed the duties and responsibilities of directing and managing the Bureau's Corporate Structure and Research Section. Gerald will continue his duties and responsibilities overseeing the Bureau's Administration and Finance Section as well. The Administration and Finance Section provides logistical support to the Bureau's regulatory sections; administers budgeting, accounting, and procurement functions; administers human resources and information technology operations; maintains Bureau records; performs special projects for the Commissioner; and oversees compilation of the Bureau's strategic plan. As you may be aware, the Corporate Structure and Research Section is primarily responsible for, among other things, processing and investigating applications from depository and non-depository institutions, individuals and other business entities for certificates of authority and licenses to conduct business in Virginia, and for branches, offices, relocations, mergers, and acquisitions.

Gerald is well-versed in the operations and functions of the Bureau, having started his career at the Bureau in 1979. He was appointed to the position of Deputy Commissioner of Financial Institutions in 2008. He is a native of Richmond and holds an undergraduate degree from the University of Richmond and a M.B.A. from Virginia Commonwealth University.

The Bureau is pleased to announce that Robert Mednikov has been promoted to the position of Assistant Deputy Commissioner. Bob will be responsible for managing the day-to-day activities involving corporate structure, including processing and investigating applications from depository and non-depository institutions, individuals and other business entities for certificates of authority and licenses.

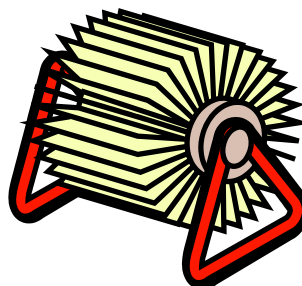
Bob began his career at the Bureau in December 1983 as an Economic Investigator in the Corporate Structure and Research Section, and has investigated applications filed by all types of financial institutions supervised by the Bureau. Most recently, Bob was a Manager of Examinations. Bob holds a degree in Economics from Virginia Military Institute.

## Privacy Safeguards



To ensure the privacy of borrower's personal financial information and to ensure your compliance with state and federal privacy rules, you are reminded that any information or responses that you

send to the Bureau via email which contain personal financial information (i.e. a borrower's loan agreement or loan application) must be sent via an encrypted password-protected zip file. Passwords should not be included with the zip file but instead sent in a separate email to a Bureau employee.



## IMPORTANT COMMISSION TELEPHONE NUMBERS

**Licensee Examinations — (804) 371-9701**

**Licensing — (804) 371-9690**

**(applications, name changes, relocations)**

**Consumer Complaints — (804) 371-9701**

**Banks and Savings Institutions — (804) 371-9704**

**SCC Office of the Clerk — (804) 371-9733**

**FAX Number for the BFI — (804) 371-9416**

**TDD — (804) 371-9206**